REMARKS

The Applicant thanks the Examiner for examination of this application. Please consider the remarks, infra.

The Applicant and the Examiner have now traversed the novelty of the claims more than once, applying a number of the same references more than once, in various combinations and using various rationale. The Applicant respectfully believes that the novelty of the claims has been more than adequately demonstrated, and respectfully requests allowance of all claims on the next office action.

The Applicant respectfully asserts that the Final Rejection of the claims was not proper. This is so at least because the Applicant's amendments did not touch claim 1; regarding claims 3 and 4, Applicant's amendments substantively amount to combining features of cancelled claim 10 into these independent claims. Therefore, the Applicant's amendments did not necessitate new grounds of rejection not already presented by the Examiner in prior office actions. The Applicant has now incurred the cost and delays of filing a Request for Continued Examination, which he respectfully believes was unwarranted.

35 U.S.C. 101

Claims 1-3 are rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter. Claims 1-3 teaches "a system comprising: logic to..." where it is alleged that the spec discloses that the term "logic" refers to software.

The Applicant has amended the claims to render the 35 U.S.C. 101 rejection moot.

35 U.S.C. §103(a)

Logan and White

Attorney Docket Number: FSP0357
Application Number: 10/578,872

Claims 3-8 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over US Patent 7,055,166 to Logan et al (hereafter referenced as Logan) in view of US PG Pub 2005/0044568 to White et al (hereafter referenced as White).

A person skilled in the art would not find the system claimed to be obvious by reading these references together. White teaches that the viewer pauses the video stream. A corresponding stop or pause instruction is then sent to the head-end 12 from the client terminal 14, interrupting MPEG delivery. (Par 45). A data record is stored--either at the client, at the head-end, or at a proxy server--indicating the point of video interruption (e.g. by SMPTE code, disk address, time offset, etc.) so that playback can be resumed from that point (or shortly before that point, to provide context). (Par 46).

If the user returns to the VIDEO viewer channel within a predetermined period (e.g. 24 hours), the system resumes transmission of the video from the point of interruption. (No user action, e.g. pressing PLAY, is required--no video control panel is presented in this scenario.) (Par 50).

White clearly teaches that a paused (not rendering) video stream is made unavailable to resume if paused for too long. But this is not the claim feature of terminating rendering of the audio and/or video stream when an insufficient number of the markers are detected within a time interval. As an initial matter, the stream in White isn't rendering, it's paused, so White isn't teaching to terminate rendering if the program isn't resumed after 24 hours. Rather, White is teaching that a paused program (which already isn't rendering) won't be allowed to resume rendering.

White also isn't teaching that rendering is terminated if a number of markers aren't received in a time interval. White is teaching that a paused program (which is already not rendering, due to being paused) cannot be resumed if the viewer waits too long to resume it – the deciding factor is not how many markers in an interval, but how long since the program was paused. White is not checking for a number of markers in a rendering stream in a time period, it is checking how long a program has been paused. Unlike the claims, the condition in White is whether a program has been paused too long, not if a sufficient number of markers aren't received in a time period.

The Applicant further notes that nothing in either reference teaches or would render obvious counting the particular kinds of markers that the Applicant claims (position, rating, restrictions, or commercial markers). There is no basis in either reference for why one skilled in the art would find it obvious to count over a time interval these kinds of markers in particular.

Dunn and Kwoh

Claims 1 and 2 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over US Patent 5,721,829 to Dunn et al (hereafter referenced as Dunn) in view of US Patent 6,115,057 to Kwoh et al (hereafter referenced as Kwoh).

In the claimed system describes a marker obtained from a stream is received from a set top box, the marker comprising position data for an audio and/or video stream for which the set top box has paused or suspended viewing. Dunn teaches a system in which the server keeps track of the position at which a stream is paused. In Dunn, therefore, there is no marker obtained from the stream and provided by the set top box to indicate the paused position.

The question then becomes whether Kwoh provides some teaching that would make it obvious to replace the already-functioning and different pause/resume mechanism of Dunn with the claimed mechanism.

Kwoh teaches that the cable head end 10004 receives television signals from a plurality of sources (including satellites) and may further insert data into the vertical blanking interval of any of the television signals. (col 13). Kwoh further teaches that rating data can be inserted to mark the beginning of a rated video segment and at the end of a video segment to mark the end of the video segment. Alternatively, the rating data could be sent continuously or near continuously during the rated video segment and embedded in the vertical blanking interval to mark the video segment for control of viewing of the rated video segment. (col 17).

Kwoh thus provides no teaching or motivation to replace the pause/resume mechanism of Dunn, in which the server records the pause position, with the claimed technique of the set top box obtaining the pause position and providing it. Kwoh merely

teaches that rating data may be inserted at various points to mark portions of a stream. It would not be obvious to one skilled the art, reading Dunn and Kwoh together, to make a system in which a marker obtained from a stream is received from a set top box, the marker comprising position data for an audio and/or video stream for which the set top box has paused or suspended viewing.

Logan and White and Kwoh

Claim 9 is rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Logan in view of White as applied to claim 4 above, and further in view of Kwoh.

The remarks provided supra are presently sufficient as to the deficiencies of combining these references to make obvious the claimed systems.

Logan and White and DePrez

Claims 11-15 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Logan in view of White as applied to claim 4 above, and further in view of US PG Pub 2003/0188316 to DePrez (hereafter referenced as DePrez).

The remarks provided supra are presently sufficient as to the deficiencies of combining Logan and White to make obvious the claimed systems. DePrez adds no teachings that would overcome these deficiencies.

Logan and White and DePrez and Kwoh

Claim 16 is rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Logan in view of White and DePrez as applied to claim 11-15 above, and further in view of Kwoh.

The remarks provided supra are presently sufficient as to the deficiencies of combining Logan and White and/or Kwoh to make obvious the claimed systems. DePrez adds no teachings that would overcome these deficiencies.

Conclusion and Remarks on Final Rejection

The Applicant and the Examiner have now traversed the novelty of the claims more than once, applying a number of the same references more than once, in various combinations and using various rationale. The Applicant respectfully believes that the novelty of the claims has been more than adequately demonstrated, and respectfully requests allowance of all claims on the next office action.

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